Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 2 and 15 of the	)	
Commission's Rules to Prohibit	)	**ET Docket No. 93-1**
Marketing of Radio Scanners	)	
Capable of Intercepting Cellular	)	
Telephone Conversations	)	

To: The Commission

PETITION FOR RECONSIDERATION

Kenwood Communications Corporation, formerly known as Kenwood U.S.A. Corporation (Kenwood), by counsel and pursuant to Section 1.429 of the Commission's Rules, (47 C.F.R. §1.429), hereby respectfully requests that the Commission reconsider and modify portions of its Report and Order, FCC 93-201, released April 22, 1993, in the captioned proceeding. The Report and Order followed comments on a Notice of Proposed Rule Making, 8 FCC Rcd. 359 (1993). The Notice proposed, and the Report and Order implemented, amendments to Parts 2 and 15 of the Commission's Rules to prohibit, after April 26, 1993, a grant of equipment authorization for, and after April 26, 1994, the manufacture or importation of, radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. In view of the significant cost and effect of the proposed rules on manufacturers of electronic equipment; and to clarify the burdens and obligations

of electronic equipment manufacturers affected by this proceeding, Kenwood states as follows:

1. Kenwood does not manufacture or market radio scanners per se, with but one exception.[1] Its electronic product lines include, however, two-way transceivers, base mobile and handheld, for licensees in various radio services, including the land mobile, marine and amateur radio services. Some of these transceivers incorporate in-band scanning capability in the receiver portion of the transceiver, and hence would be subject to the rules governing radio scanners adopted in this proceeding. Some of these units, including certain of those sold to amateur radio operators, can be modified by Kenwood to operate on additional frequencies for legitimate purposes by licensees, such as, for example, to permit two-way Military Affiliate Radio Service (MARS) and Civil Air Patrol (CAP) operation. Under current circuit configurations, such modifications (which cannot be performed by most individuals due to the nature of the microcircuitry involved and the complexity of the modifications necessary) would, incidentally, expand the receiver capability of these transceivers to include frequencies up to and including the 800 MHz band.

2. As the result of the foregoing, Kenwood is concerned about several aspects of the Report and Order, and the newly adopted

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[1] Kenwood manufactures a radio receiver, the RZ-1, with wideband receiving capabilities, which will require modification to comply with the new rules. The concerns expressed by Kenwood herein do not apply directly to its obligation to reconfigure this device in particular, in accordance with the Report and Order.

rules. Though Kenwood neither manufactures nor imports any device (other than the RZ-1 unit referred to in footnote 1, supra) which is capable of reception on domestic public cellular frequencies, it does, routinely, modify Kenwood equipment at its factory facility for those authorized (by proof of license) to use MARS and CAP frequencies. This function, to the extent that it would incidentally expand the capability of the receiver of such equipment to receive domestic public cellular communications, would appear to violate Section 15.121 of the Rules as adopted.

3. It is assumed from the Report and Order that any modification of a transceiver which has been approved under the Commission's equipment authorization procedures in Part 2 of the rules, to enable the same to receive cellular frequencies (albeit incidentally), would be in violation of the proposed rule section 15.121 regardless of the reasons therefor. It is further assumed that any such modification would vitiate the equipment authorization for that unit. That being the case, Kenwood requests reconsideration of the proposed time frame for the new rules, and about the definition of receivers which are capable of being "readily being altered by the user". Kenwood's concern would be addressed satisfactorily by the modification of the Report and Order to provide for exemption of manufacturer modifications for Commission licensees from the strictures of the proposed Section 15.121 to accommodate MARS and CAP licensees. It is reasonable to assume that any necessary modification made by Kenwood for licensed users of MARS and CAP frequencies would not create any significant

risk of misuse of the equipment for cellular telephone interception. Indeed, because MARS and CAP licensees are directly subject to Commission jurisdiction in the event of violation of the Electronic Communications Privacy Act by unlawful cellular interception, there is no need to prohibit the factory modification of two-way equipment, including Kenwood transceivers, to receive and transmit on MARS and CAP frequencies for specific licensees, even though such modification might incidentally permit expanded receive capability as well in other bands.

4. In any event, the Report and Order prohibits the grant of equipment authorization to any device not meeting the limitations of proposed Section 15.121 after April 26, 1993, which in fact passed just four days after the release of the Report and Order. Any currently approved device could be manufactured or imported until April 26, 1994, and devices imported or manufactured prior to that time could be sold thereafter. That time frame is adequate from the point of view of being able to sell current inventory, but

and other parts may also be necessary, at a substantial initial investment. This being the case, and to the extent that a number of existing products of a given manufacturer may be determined not to comply with the new rules, given the above circumstances, (even by Kenwood for purchasers of the device), a reasonable period for implementation of any new rule adopted in this proceeding should have been, but was not, accorded manufacturers. Kenwood therefore requests that a two-year transition period, rather than one, should be permitted in which existing products may be imported and manufactured.

5. Neither is the April 26, 1993 cut-off date for equipment authorization reasonable. Products in the development cycle should have been permitted to be accepted, at least for 60 to 90 days after the effective date of the new rule, so that manufacturers such as Kenwood, which have invested substantial sums in the development of a new product, will not have wasted the same under the circumstances.[2]

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[2] This is not an academic issue. The Commission's definition of "readily being altered by the user" is not at all clear. It appears to be somewhat less than absolute, requiring that a user not be able, in a scanning receiver, to enable it to receive cellular telephone communications by virtue of simple modifications such as adding or clipping the leads of, or installing, a diode, resistor and/or jumper wire; or replacing a plug-in semiconductor chip, or programming a semiconductor chip using access codes or an external device such as a PC. It is impossible, based on those anecdotal examples, for Kenwood to determine which of its products may require modification, and if so, in what respects, in order to comply with the proposed rule. This is especially true since the Report and Order lists those examples, but suggests that "readily alterable" is not limited to those examples. What other configurations constitute "readily alterable"? The timetable for modification of products, and for having a product to sell at all, is dependent, among other things, on the interpretation of the

6. Kenwood has, as the Commission is aware, a reputation for scrupulous adherence to equipment authorization rules and procedures. It intends to strictly comply with applicable new rules adopted in this proceeding, though its products are not used by or readily useful to those who would intercept cellular telephone conversations. It is difficult, however, if not impossible to determine in the context of electronic components what constitutes a device which is "readily modifiable by the user." Commercial electronic products, such as those devices manufactured and marketed by Kenwood, and especially two-way transceivers, are seldom if ever altered by users as a matter of fact as a means of facilitating interception of cellular telephone calls. The microcircuitry of such devices, and the fact that the transceivers are principally functional on frequencies far removed from cellular frequencies, are both significant and adequate deterrents to non-engineer user modifications. Many such devices could, however, by a reasonably skilled technician, be modified to unlock the frequency synthesis mechanism in the receiver, though not by the simple means listed in Section 15.121. The modification of microprocessor chips to incorporate frequency blocking, which was suggested by certain commenters herein but not required in the Report and Order, would entail significant reconfiguration of the

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definition of "readily alterable" adopted in the Report and Order in this proceeding, which is far too vague a definition to be complied with by any manufacturer, short of implementing actual frequency blocking in the microprocessor chip, which the Commission specifically did not require.

microprocessors of some Kenwood equipment, and would involve a great deal of time and expense in doing so. Yet, given the definition of "readily being altered by the user" contained in Section 15.121 of the Rules offers inadequate guidance to the manufacturer. A more reasonable method of proceeding is to clarify that factory modifications to authorized equipment in order to enable, for example, MARS and CAP operation for licensed users, does not constitute a violation of Section 15.121 of the rules for otherwise compliant equipment.

Therefore, the foregoing considered, Kenwood Communications Corporation respectfully requests that, in the new regulations which have the effect of imposing significant costs and regulatory burdens on manufacturers of communications equipment, the Commission should better define the means by which a manufacturer can determine whether its products are "capable of readily being altered by the user". Kenwood further requests that the term "readily" be given its ordinary and usual meaning, which would indicate that equipment, to be subject to the proposed new Rule Section 15.121, would have to be quickly modifiable by non-technical consumers thereof. Finally, a more reasonable period than that set forth in the Report and Order should be established for products in the development stage to be authorized for manufacture and marketing, and that a reasonable time, on the order of two years, be permitted for products which have already been approved by the Commission's equipment authorization procedures, to allow that equipment to be redesigned and, as necessary, replaced.

The Report and Order should be modified to incorporate these changes, and the same is so requested.

Respectfully submitted,

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